IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 333 OF 2007

IN

WRIT PETITION NO. 2364 OF 2002

M/s Patel Aluminium Pvt. Ltd. .. Appellant

V/s

Maharashtra Shramik Sena & Anr. .. Respondents

Mr.S.M. Naik for the Appellant.

Mr.C.U. Singh, Senior Advocate i/b Sanjay Udeshi & Co. for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 29TH JUNE 2007

JUDGMENT*: (Per Karnik, J.)

1. This appeal is directed against the judgment and order dated 10th January 2007 passed by a learned Single Judge of this Court dismissing the Writ Petition No.2364 of 2002 filed by the appellant.

2. Appellant is a private limited company incorporated and registered under the Companies Act, 1956 engaged in the manufacture of aluminium extruded products and aluminium circles and has its factory at

Goregaon, Mumbai. First Respondent is a Trade Union representing the workmen employed by the appellant. The workmen of the appellant were paid salary and allowances in accordance with the settlement entered in the year 1990, which expired in the year 1993. On 12th August 1993, the respondent submitted a Charter of Demand for revision of payscales and twenty other demands. As no agreement could be reached in conciliation proceedings, the matter was referred for adjudication by the Industrial Tribunal (for short "the Tribunal") by the Government of Maharashtra by an order dated 17th December 1996. Before the Tribunal, the parties adduced oral and documentary evidence. After considering oral and documentary evidence adduced before it by the parties, the Tribunal partly allowed the demand for increase in the basic wages and granted rise in the basic wages for every workman at the rate of Rs.250/- per month upto the year 1999, at the rate of Rs.500/- per month from January 2000 to December 2001 and at the rate of Rs.650/- per month from January 2002 onwards. Rest of the demands of the Union like special pay, increase in the dearness allowance, modification in the computation of gratuity, increase in the contribution to the provident fund, increase in the privileged leave, casual leave and other leaves, demand for allowances like educational allowance, house rent allowance,

leave travel allowance, facilities of medical aid, free transport, interest free loan, festival advance, providing of rain coats and umbrella etc. were rejected. Aggrieved by the decision of the Tribunal dated 30th May 2002, the appellant filed a writ petition bearing Writ Petition No.2364 of 2002 in this court. By an impugned order dated 10th January 2007, the learned Single Judge dismissed the writ petition.

3. Learned counsel for the appellant submitted that the Tribunal did not properly consider and appreciate the financial position of the appellant and failed to appreciate that the appellant was incurring losses year after year and had no capacity to bear the burden of additional wages. The wages paid to the workmen were higher than the minimum wage fixed under the Minimum Wages Act and, therefore, the Tribunal ought not to have granted any increase in the wages when the appellant company was incurring losses and had no capacity to bear any additional burden. Counsel further submitted that the finding of the judgment of the Tribunal that there was functional integrality between different units operating in the same premises was erroneous and perverse. Counsel submitted that there were no pleadings about the functional integrality of different units in the compound and material before the Tribunal was

insufficient to come to the conclusion of functional integrality between different units in the same premises. Therefore, the Tribunal erred in awarding increase in the wage on the basis the profit made by other units in the absence of any functional integrality between them. Counsel further submitted that the learned Single Judge erred in not interfering with the erroneous and perverse finding of the Tribunal in that regard and ought to have set aside the Award of the Tribunal.

4. Learned Counsel for the appellant submitted that as the appellant was not in a position to bear the burden even of the existing wages and was incurring losses, it had declared a Voluntary Retirement Scheme (for short "the VRS"), under which services of several employees were severed. Introduction of the VRS itself showed that the business was slack and the existing work force was surplus. The Tribunal ought to have given appropriate importance to the introduction of the VRS and ought to have held that the appellant company had no capacity to bear the burden of any increase in the wage structure.

5. As regards the finding of the Tribunal that there was a functional integrality between different

units, who were sister concerns of the appellant and running in the same compound, counsel for the appellant submitted that all the units were private limited companies and being so, each was a different person in the eye of law. Therefore, the Tribunal could not have held that there was functional and financial integrality and the finding was perverse. The Tribunal has in its judgment noted that different units were located in the same compound and services of workmen were transferable from the appellant company to other concerns and vice versa. Transferability from and to different units is an important ingredient which certainly can be taken into consideration while deciding whether there existed functional integrality between the different units. The Tribunal has not taken into consideration any irrelevant fact while reaching the finding of functional integrality and the finding is also based upon the evidence before it. Appreciation of evidence was within the jurisdiction of the Tribunal and we do not find any perversity in the appreciation of the evidence. It is settled principle of law that in exercise of writ jurisdiction under Article 226 or 227 of the Constitution of India, a finding of fact recorded by a subordinate court or a tribunal based on proper appreciation of evidence cannot be set aside on reappreciation of evidence by the High Court unless

the finding is based on no evidence or an evidence which, in law, is not admissible or is otherwise perverse. Learned Single Judge did not notice any perversity in the finding of fact recorded by the Tribunal about functional financial integrality and nothing was pointed out to us to show that the finding was in any way perverse.

6. However, at the insistence of the learned counsel for the appellant and in order to satisfy our conscience, we have gone through the balance sheets and profit and loss accounts, copies of which are at pages 153 onwards of the compilation. The Annual Report of the appellant for the year 1993-94 contains the figures of profit and loss for that year as well as the comparative figures of the previous year. Profit and loss statement discloses that the appellant company earned gross profit of Rs.42 lakhs in the previous year, i.e. in the year ending 31st March 1993 and gross profit of Rs.17.36 lakhs for the year ending 31st March 1994. The said gross profit was arrived at after deducting from the earnings, cost of raw materials, cost of stores & spares, processing & conversion charges, central excise duty, expenses of power & fuel, and machinery hire charges as also wages and allowances including bonus. From this gross profit, further deduction was made for salaries and

other expenses. We fail to see how salaries could be again deducted from the gross profit which was arrived at after deducting wages and allowances including bonus for arriving at net profit. In any event, the burden of proving that additional expenses were incurred for salaries other than wages was clearly on the appellant company which it had not discharged. Similarly, the profit and loss account for the year ending 31st March 1995 shows that the appellant company earned a gross profit Rs.10.86 lakhs. A loss of Rs.39.43 lakhs is shown to have been incurred in the profit and loss account for the year ending 31st March 1996. However, it may be noted that an amount of Rs.11.45 lakhs paid as retrenchment compensation to the workmen and a further sum of Rs.11.45 lakhs paid as expenses of voluntary retirement compensation paid to the workmen is deducted from the income for arriving at the amount of loss. Amount of voluntary retirement and retrenchment compensation paid to the workmen would reduce the expenditure which the appellant company would have incurred in future years had the services of the workmen not been severed under the VRS. The expenses of voluntary retirement compensation and retrenchment compensation paid to the workmen would, therefore, reduce the future stream of expenses which the appellant would have been required to incur over several years in future. Expenses of

voluntary retirement and retrenchment compensation therefore are required to be amortized over a period of time or over the next few years to arrive at a true and correct financial position of a company. Loss shown on account of deduction of entire expenses of VRS in the year in which they were incurred cannot, in our opinion, be considered to represent the true financial position of the company. In any event, the appellant ought to have explained in its evidence the necessity of deducting all the expenses of VRS in the financial year in which the expenses were incurred if at all it wanted to deduct all the expenses in that financial year. This was not explained by the appellant. The appellant examined Shri Nayan Mohanbhai Patel, Executive Director of the appellant company, but did not examine any person from its accounts department to prove the profit and loss account and various entries therein. When questions were sought to be put to Shri Patel regarding the entries in the balance sheet and profit and loss account, he could not explain the entries therein and pleaded lack of knowledge. He stated : "It is correct to say that I am unable to explain the queries asked regarding the balance sheet and profit and loss account." Thus the balance sheets and profit and loss statements were not legally proved and for three of the four years for which statements were produced,

they showed that the appellant was making profits.

7. We have referred to the profit and loss statements and the cross examination of Shri Patel regarding the balance sheet and profit and loss statements not with a view of reappreciation of evidence, but only for satisfying our conscience that the findings reached by the Tribunal are not in any way perverse and are possible findings based on appreciation of evidence.

8. In the circumstances, the learned Single Judge was wholly right in not interfering with the finding of fact recorded by the Tribunal including regarding ability of the appellant company to bear the additional burden of increase in the wage. The Tribunal has noted that for 8 years after termination of the settlement, the workmen were not granted any increase in the basic wage. The Tribunal has only granted a small increase in the basic wage of Rs.250/- for the initial two years and of Rs.650/- per month to operate after 2000, which can in no way be said to be unreasonable. No other demands of the workmen were granted.

9. In the circumstances, the learned Single Judge was right in declining to interfere in the Award of

the Tribunal. For these reasons, the appeal fails and is dismissed in limini.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)